

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH THOMAS,)	
)	
Plaintiff,)	No. 08 C 3009
)	
v.)	Judge Aspen
)	Magistrate Judge Mason
AMERICAN GENERAL FINANCE, INC.)	
)	
Defendant)	

MOTION TO QUASH SERVICE OF SUMMONS

Defendant American General Finance, Inc. ("AGF"), appearing in a special and limited capacity through its attorney, Stephen L. Tyma, pursuant to Fed. R. Civ. Pro. 4(h) and 735 ILCS 5/2-204, hereby requests that the Court quash the purported service of process on it as inadequate and not in conformity with the requirements of statutory and constitutional due process. In support of its request, AGF represents as follows:

1. On or near July 8, 2008, Plaintiff Kenneth Thomas obtained from the Clerk of the United States District Court a summons directed to AGF and gave as AGF's address

AMERICAN GENERAL FINANCE, INC.
12337 S. State Rt. 5, Unit 20
Plainfield, IL 60544

The summons does not identify a specific individual to whom the summons is to be directed. A copy of the summons is appended hereto as Exhibit A.

2. On July 10, 2008, a copy of the summons and complaint was delivered to the office described above, apparently by handing it to a receptionist.

3. AGF is a corporation organized under the laws of the State of Indiana. It is not registered to do business in Illinois, and it does not do business in the State of Illinois. In keeping

with the requirements of the Illinois Business Corporation Act, affiliates or subsidiaries of AGF made filings with the Illinois Secretary of State which identify registered agents and give those registered agents' addresses.

4. The facility at 12337 S. State Rt. 5 in Plainfield, Illinois is a branch office of American General Financial Services of Illinois, Inc., a wholly-owned subsidiary of American General Finance Corporation, which is itself a wholly-owned subsidiary of AGF. Through this branch office, American General Financial Services of Illinois, Inc. originates and administers consumer loans. AGF's registered agent does not maintain an office at this address, nor is there any individual at this office who is an officer or director of AGF. Exhibit B.

5. Section 2-204 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-204, provides, in pertinent part, as follows:

A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law.

This provision has been interpreted to require that service be made on an officer or agent only in his capacity as such and not personally or individually. *First State Bank & Trust Co. of Hanover Park v. Winfrey*, 165 Ill. App.3d 767 (1st Dist. 1987). In addition, service on a corporation may not be made through the substitute service provisions applicable to individuals. *Van Der Molen Disposal Co. v. Western Bearing Corp.*, 127 Ill. App.2d 33 (1st Dist. 1970).

6. Rule 4(h) of the Federal Rules of Civil Procedure provides as follows:

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy of each to the defendant . . .

7. No employee at the Plainfield, Illinois office is an “agent” of AGF for purposes of service of process. Exhibit B. The people who work at that office are all employees of American General Management Services, Inc. *Id.* No employee at that field office has been authorized by AGF to accept service of process on its behalf. *Id.* Service of process at the Plainfield office therefore is improper. *American Institute of Certified Public Accountants v. Affinity Card, Inc.*, 8 F. Supp.2d 372, 376-78 (S.D. N.Y. 1998). *See also, Slates v. International House of Pancakes, Inc.*, 90 Ill. App.3d 716 (4th Dist. 1980).

8. This Motion is supported by the Affidavit of Karla Davis, which is appended hereto as Exhibit B and incorporated herein by this reference.

For the foregoing reasons, Defendant American General Finance, Inc. respectfully requests that the Court:

A. Quash the purported service of process through certified mail delivery to an office located at 12337 S. State Rt. 5 in Plainfield, Illinois as defective and unwarranted and as not being in conformity with the requirements of Federal and Illinois law and minimum standards of due process;

B. Award AGF its costs and attorneys fees incurred in having to appear and request that purported service of process on it be quashed; and

C. Grant AGF such other relief as the Court deems just and equitable under the circumstances.

Dated: July 29, 2008

AMERICAN GENERAL FINANCE, INC.

By: _____

Its attorney

Stephen L. Tyma
Stephen L. Tyma, P.C.
105 West Madison Street, Suite 2200
Chicago, Illinois 60602
(312) 372-3920

Attorney for Defendant

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P 2/6

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

KENNETH THOMAS

CASE NUMBER: 08-CV-3009

V.

ASSIGNED JUDGE: ASPEN

AMERICAN GENERAL FINANCE, INC.

DESIGNATED
MAGISTRATE JUDGE:

TO: (Name and address of Defendant)

AMERICAN GENERAL FINANCE, INC.
12337 S. State Rt 5, Unit 20
Plainfield, IL 60544

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Larry P. Smith & Associates, Ltd.
205 N. Michigan Avenue, Suite 4000
Chicago, Illinois 60601

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Michael W. Dobbins, Clerk



(By) DEPUTY CLERK

July 8, 2008

Date



EXHIBIT

A

2008-07-11 10:16 AGFS 2719 Plainfield

815-267-3427 >> 18124685396

P 3/6

AO 140 (Rev. 05/00) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<p>G Served personally upon the defendant. Place where served: _____</p> <p>_____</p> <p>G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.</p> <p>Name of person with whom the summons and complaint were left: _____</p> <p>G Returned unexecuted: _____</p> <p>_____</p> <p>_____</p> <p>G Other (specify): _____</p> <p>_____</p> <p>_____</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">Date</div> <div style="text-align: center;">Signature of Server</div> </div> <p>_____</p> <div style="text-align: center;">Address of Server</div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

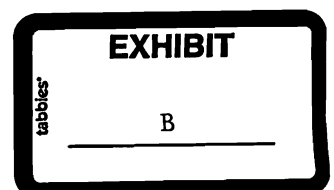
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH THOMAS,)	
)	
Plaintiff,)	No. 08 C 3009
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v.)	Judge Aspen
)	Magistrate Judge Mason
AMERICAN GENERAL FINANCE, INC.)	
)	
Defendant)	

**AFFIDAVIT OF KARLA DAVIS IN
SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS**

Karla Davis deposes and states as follows:

1. I have personal knowledge of the matters to which I attest in this affidavit and can give testimony to the same effect as my attestations if I am called upon to do so at a hearing in this matter.
2. I am employed as a Senior Paralegal at American General Finance Corporation in its main office in Evansville, Indiana.
3. American General Financial Services of Illinois, Inc. is a wholly-owned subsidiary of American General Finance Corporation.
4. I am informed and believe that, on or near July 10, 2008, an individual delivered a copy of the summons and complaint in this matter to a receptionist or other employee at 12337 S. State Rt. 5, Unit 20 in Plainfield, Illinois.
5. American General Finance Corporation is a corporation organized under the laws of the State of Delaware. In keeping with the requirements of the Illinois Business Corporation Act, when it acquired several entities which were either organized under the laws of the State of Illinois or registered to do business in Illinois, American General Finance Corporation made a filing with the Illinois Secretary of State which identifies American General Finance Corporation's registered agent and gives that registered agent's address. The information in that filing is current and correct.
6. The facility at 12337 S. State Rt. 5, Unit 20 in Plainfield, Illinois is a branch office of American General Financial Services of Illinois, Inc. through which American General Financial



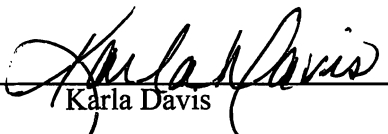
Services of Illinois, Inc. originates and administers consumer loans. No registered agent for American General Finance Corporation maintains an office at this address, nor is there any individual at this office who is an officer or director of American General Finance Corporation.

7. As a matter of express policy, American General Finance Corporation and its affiliates and subsidiaries, including American General Financial Services of Illinois, Inc., do not permit or authorize any of their employees or representatives at field offices to accept service of process. No person other than the registered agents for these entities is authorized to accept service of process. This policy has been implemented, in part, because the offices maintained by American General Finance Corporation and its affiliates and subsidiaries are so numerous that it would be virtually impossible for the entities to maintain adequate control over information about litigation involving them.

8. No employee at the Plainfield, Illinois field office is an "agent" of American General Finance Corporation for purposes of service of process. No employee at that office has been authorized to accept service of process on behalf of American General Finance Corporation.

9. Under penalty of perjury as provided by 28 U.S.C. § 1746, I certify that the foregoing statements are true and correct, except as to such statements as are made on my information and belief, and, as to such statements, I certify as aforesaid that I actually am informed as I state and that I believe the information which I have is true.

Dated: July 28, 2008


Karla Davis

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